Sub-Chapter 70

Natural Gas -- Utility Restructuring, Provider Conduct, Supplier Licensing, Universal System Benefits Program

- 38.5.7001 CONTEXT AND DEFINITIONS (1) These rules implement Montana's Natural Gas Utility Restructuring and Customer Choice Act, 69-3-1401 through 69-3-1409, MCA, and shall be construed in that context. Except in administration of 69-3-1408, MCA (universal system benefits program), the commission does not intend these rules to apply to a "natural gas utility" as defined at 69-3-1401, MCA, so long as the utility does not restructure as described at 69-3-1403, MCA, or become a "natural gas supplier" as defined at 69-3-1401, MCA. Unless otherwise provided through rule or through order of the commission, these rules shall apply in all gas utility restructurings, including in periods of transition to customer choice and pilot programs which may be a part of a restructuring plan.
- (2) Words used in these rules shall have the meanings assigned in 69-3-1402, MCA, and, if not defined there, shall have their common meanings in the context of gas utility and gas pipeline regulation and restructuring. Words used in these rules also have the meanings assigned by this rule, unless the context otherwise clearly demands:
- (a) "affiliate" means a parent, subsidiary, division, or the like, regardless of designation, owning or controlling the provider, owned or controlled by the provider, under common ownership with the provider, or under common control with the provider;
 - (b) "provider" means a system services provider;
- (c) "service" generally includes all incidents to service
 (e.g., applying for service, communicating in regard to service);
- (d) "supplier" means "natural gas supplier," as defined at 69-3-1402, MCA, which includes any person offering to sell gas to end-use customers but not if the offering is by a public utility as a public utility and in accordance with commission-approved tariffs;
- (e) "supply service" means providing natural gas for enduse, whether or not regulated by the commission;
- (f) "system services" includes gas transmission services, distribution services, storage services, and all other gas services regulated by the commission, directly or indirectly, excluding supply services;
- (g) "utility" means a "public utility" as defined at 69-3-101, MCA. (History: Sec. 69-3-103, MCA; <u>IMP</u>, Secs. 69-3-103, 69-3-1402, 69-3-1404, 69-3-1405, 69-3-1408, MCA; <u>NEW</u>, 1998 MAR p. 1506, Eff. 6/12/98.)

- 38.5.7002 GENERAL -- PROCEDURES IN GENERAL -- PROPRIETARY INFORMATION (1) Compliance, enforcement, and other administrative proceedings before the commission which may result from implementation of these rules or the statutes upon which they are based shall be in accordance with applicable statutes (e.g., Title 2, chapter 4, MCA (Montana Administrative Procedure Act)) and rules (e.g., ARM Title 38, chapter 2) governing proceedings before the commission.
- (2) In accordance with 69-3-105, MCA, supplier license applicants, supplier licensees, and others who may be participating in any procedure before the commission arising from these rules, may request that qualifying trade secret information submitted to the commission (e.g., through licensing, annual report, compliance, or investigation procedures, or other requirements of statute, rule, or order) be protected by the commission from public disclosure through protective order. Requests for a protective order must clearly identify the information to be protected and, in detail, identify the factual and legal basis upon which the information is asserted to qualify as trade secret and be entitled to protection. (History: Secs. 69-3-103, 69-3-1405, MCA; <u>IMP</u>, Secs. 69-3-105, 69-3-1405, MCA; NEW, 1998 MAR p. 1506, Eff. 6/12/98.)

Rules 7003 and 7004 reserved

38.5.7005 SERVICE PROVIDERS -- STANDARDS OF CONDUCT

- (1) Except as provided in (2), a commission-regulated system services provider shall:
- (a) apply all discretionary tariff provisions in the same manner to all persons to whom the tariff provisions apply;
- (b) process all similar requests for service in the same manner and period of time;
 - (c) strictly enforce all mandatory tariff provisions;
- (d) prevent any discrimination in favor of its own supply, other services, divisions, or affiliates;
- (e) prevent all forms of self-dealing that could result in noncompetitive prices to consumers;
- (f) grant others (e.g., consumers, suppliers) access to retail transmission, storage, and distribution on a nondiscriminatory basis at rates, terms, and conditions comparable to that which its affiliates have;
- (g) disclose no service or market information received from a non-affiliate to others, including an affiliate (information received from an affiliate may be treated in the same fashion, unless otherwise required by these rules);
- (h) disclose at the same time to all non-affiliates all service and market information disclosed to an affiliate (a non-affiliate may agree to limit the scope of information to be provided by the system services provider and may agree that information need be provided only on request);

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- (i) for customers requesting information on available supply, if identifying any supplier, identify all licensed gas suppliers serving in the service area in which the customer resides, and, in providing information to customers on behalf of any supplier, offer to provide information on behalf of all other suppliers on the same terms;
- (j) make known to non-affiliates at the same time any discounts offered to an affiliate, the terms and conditions under which the discount is offered, and the means through which the non-affiliates can obtain a comparable offer (affiliates may be advised in the same fashion, unless otherwise prohibited by these rules); and
- (k) function independently of its affiliate suppliers and cause its employees and employees of its affiliate suppliers to function independently, to the maximum extent practicable.
- (2) A commission-regulated system services provider having or applying for commission-approved standards of conduct to be tariffed in accordance with 69-3-1404, MCA, may request that a tariffed standard depart from the standards in this rule. The commission may grant a waiver of the requirements in this rule upon a showing of good cause and circumstances unique to the provider's operations which justify the waiver. (History: Sec. 69-3-103, MCA; $\underline{\text{IMP}}$, Sec. 69-3-1404, MCA; $\underline{\text{NEW}}$, 1998 MAR p. 1506, Eff. 6/12/98.)
- 38.5.7006 SERVICE PROVIDERS -- STANDARDS OF CONDUCT -- REVIEW OF SERVICE POLICIES (1) Through request by the system services provider, or complaint by any other provider, supplier, customer, or other interested person, or on its own motion, the commission may review a system service provider's service rule or policy, tariffed or otherwise, to determine whether the rule or policy as applied is just and reasonable under the circumstances, including in regard to whether it results in abusive or anticompetitive practices. (History: Sec. 69-3-103, MCA; IMP, Sec. 69-3-1404, MCA; NEW, 1998 MAR p. 1506, Eff. 6/12/98.)

Rules 7007 through 7009 reserved

38.5.7010 GAS SUPPLIERS -- APPLICATION FOR LICENSE

- (1) The application to the commission for a natural gas supplier license shall include the following provisions, complete and in detail (except as provided in (5)):
 - (a) the business name of the applicant;
- (b) the street address and the mailing address of the applicant;
 - (c) the telephone number of the applicant;

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- (d) a description of the applicant's business organization (e.g., sole proprietorship, partnership, corporation), including a diagram of organization, an identification of the state in which organized, and a statement as to whether the applicant owns or operates gas distribution, transmission, or storage facilities, where those facilities are located, and whether those facilities are open and accessible on a nondiscriminatory basis to all gas suppliers, a list of the applicant's affiliates, a description of each affiliate's business activities and purposes, a statement as to whether any affiliate owns or operates gas distribution, transmission, or storage facilities, and an explanation of where those facilities are located and whether the facilities are open and accessible on a nondiscriminatory basis to all gas suppliers;
- (e) the name, address, and telephone number of the supplier representative to be contacted regarding the application;
- (f) the name, address, and toll-free telephone number of the supplier representative or office that may be contacted by consumers in regard to supply;
- (g) the name, mailing address, street address, and telephone number of the applicant's agent for service of process in Montana, if required by law to designate such agent;
- (h) information demonstrating the gas supply offered or to be offered by the applicant will be provided as offered;
- (i) information demonstrating the gas supply offered or to be offered by the applicant will be adequate in terms of quality, safety, and reliability;
- (j) information demonstrating the applicant's financial integrity as a gas supplier, including a current and detailed balance sheet, income and profit and loss statement, statement of cash flows, and the most recent of the applicant's annual reports to owners (e.g., stockholders);
- (k) information demonstrating adequate firm deliverability (including supply, pipeline capacity, and interconnection agreements) to meet load requirements;
- (1) a brief description of all federal and state judicial and administrative actions pending against the applicant (including on appeal) in which judgment is sought in an amount of 10 percent or more of the applicant's net worth; and
- (m) identification of all federal and state judicial and administrative actions, if any, whether pending at the time of application (including on appeal) or concluded within 5 years prior to the time of application, which involve the applicant's authority to supply, market, and broker natural gas.
- (2) Applicants shall also file a sample of each type of contract intended to be used in the providing of supply to residential and small commercial consumers.
- (3) At the time of making application to the commission for a supplier license, applicants shall notify distribution services providers in accordance with 69-3-1405, MCA.

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- (4) All information provided by the applicant in regard to the application shall be updated by the licensee each time any change in that information occurs.
- (5) Some of the above requirements may not apply to certain types of suppliers. If an applicant believes that to be the case in regard to an application, the applicant shall clearly state that and the reason supporting such determination, in lieu of the information requested. (History: Secs. 69-3-103, 69-3-1405, MCA; <u>IMP</u>, Sec. 69-3-1405, MCA; <u>NEW</u>, 1998 MAR p. 1928, Eff. 6/12/98.)

38.5.7011 GAS SUPPLIER -- ELECTRONIC REGISTRATION

- (1) All applicants and licensed suppliers must complete and maintain an electronic registration established by the commission on its internet web site as a condition of becoming and remaining licensed. Applicants and suppliers must provide the following information electronically:
- (a) a complete business name, and all other names (complete) that may be used when marketing natural gas and other unregulated energy services to consumers;
- (b) the complete street address and mailing address of the principal office;
- (c) the name, address, direct telephone number, fax number, and e-mail address of the supplier representative or office to be contacted regarding the license application and the license; and
 - (d) a listing of customer segments served.
- (2) If residential and small commercial customers are solicited or served, applicants and suppliers must also provide the following information:
 - (a) a toll-free customer service telephone number; and
- (b) a listing of the principal geographic areas served, including a list of Montana cities where residential and small commercial customers are solicited and served. (History: Secs. 69-3-103, 69-3-1405, MCA; <u>IMP</u>, Sec. 69-3-1405, MCA; <u>NEW</u>, 1998 MAR p. 1506, Eff. 6/12/98.)
- 38.5.7012 GAS SUPPLIER -- LICENSES (1) Except as otherwise allowed or required by operation of law or order of the commission, gas suppliers may commence operations in the Montana service areas of restructured utilities, and those areas otherwise allowing a competitive supply, upon issuance of a license by the commission.
- (2) Upon issuance of a license, the gas supplier shall notify all distribution service providers serving in the area of the gas supplier's intended operations. (History: Sec. 69-3-103, 69-3-1405, MCA; $\underline{\text{IMP}}$, Sec. 69-3-1405, MCA; $\underline{\text{NEW}}$, 1998 MAR p. 1506, Eff. 6/12/98.)

Rule 7013 reserved

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- 38.5.7014 GAS SUPPLIER -- ANNUAL REPORTS (1) Annual reports must be filed by each licensee at calendar year end.
- (2) Annual reports shall be on a form approved by the commission and include the following information (the commission may require that information from suppliers be filed more frequently, if deemed necessary):
- (a) a descriptive list of all services offered during the year and at the end of the year;
- (b) quality and reliability-of-service reports (e.g., Btu content, outages, customer quality and reliability-of-service complaints), itemized by month; and
- (c) an organization chart showing ownership and control relationships among any holding companies and subsidiaries. (History: Sec. 69-3-103, 69-3-1405, MCA; <u>IMP</u>, Sec. 69-3-1405, MCA; <u>NEW</u>, 1998 MAR p. 1506, Eff. 6/12/98.)

Rule 7015 reserved

- 38.5.7016 GAS SUPPLIER -- LICENSE REVOCATION (1) The commission may revoke the license of a gas supplier if the gas supplier:
- (a) violates any federal or state law which has as its purpose, directly or indirectly, fair competition among suppliers;
- (b) violates any federal or state law which has as its purpose, directly or indirectly, protection of consumers;
 - (c) violates any rule of the commission;
- (d) provides false information or materially incomplete information to the commission in regard to licensing or reporting;
 - (e) fails to file an annual report;
- (f) otherwise fails to abide by the laws of the United States and the state of Montana which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, privacy, and like laws which are applicable, generally or specifically, to the provision of gas supply;
- (g) fails to supply gas in accordance with its agreements with customers and representations to the commission; or
- (h) engages in anticompetitive or abusive practices. (History: Secs. 69-3-103, 69-3-1405, MCA; <u>IMP</u>, Sec. 69-3-1405, MCA; <u>NEW</u>, 1998 MAR p. 1506, Eff. 6/12/98.)

Rules 7017 through 7019 reserved

UTILITY DIVISION

6/30/98

38.5.7021

- 38.5.7020 UNIVERSAL SYSTEM BENEFITS PROGRAM (1) Pursuant to 69-3-1408, MCA, natural gas utilities shall implement a universal system benefits program (USBP), a public purpose program for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance (69-3-1402, MCA). The USBP shall be funded through a universal systems benefit charge (USBC), a nonbypassable rate or charge to be imposed on each customer (69-3-1402, MCA).
- (2) The USBC shall be an amount, per dekatherm or Mcf of natural gas delivered to each end user, whether by utility, distribution services provider, or transmission services provider (if for end use), collected through a rate or charge (per dekatherm or Mcf) to each end user, and, except as provided in ARM 38.5.7021, established so as to generate, system-wide, an annual amount no less than 1.12 percent of the utility's, distribution services provider's, or transmission services provider's annual revenues derived from natural gas services to end-users. From the amount collected system wide an amount at least equal to .42 percent of the annual revenues must be applied to low-income weatherization and bill assistance.
- (3) The USBP may be administered by each utility, distribution services provider, or transmission services provider implementing a USBP or by another on its behalf. A USBP may be done in coordination with a federal, state, or local government agency or otherwise. Examples of acceptable USBPs include energy share and low income energy assistance program. (History: Secs. 69-3-103, 69-3-1408, MCA; IMP, Sec. 69-3-1408, MCA; NEW, 1998 MAR p. 1506, Eff. 6/12/98.)

38.5.7021 UNIVERSAL SYSTEM BENEFITS PROGRAM -- PROCEDURE

- (1) Each utility, distribution services provider, and transmission service provider (if delivering gas for end-use) shall file with the commission a USBP plan no later than August 5, 1998.
 - (2) The filing shall include:
- (a) a description of the proposed USBP plan, with supporting testimony;
- (b) proposed tariffs reflecting changes to rates, if required, to fund the USBP at no less than the minimum annual amount (percentage of annual revenues) established in ARM 38.5.7020;
- (c) if the utility objects to the minimum annual amount established in ARM 38.5.7020, the utility may also file, in addition the requirements of (2)(a) and (b), above, an alternative proposal, with supporting testimony; and

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- (d) a description of the utility's or provider's USBP, formal or informal, in place for the period May 2, 1997, to August 5, 1998, identifying the amount (in percentage of annual revenues) at which the program was funded and the amount (in percentage of annual revenues) which was applied to low-income weatherization and bill assistance, and a proposal for implementing (4), if applicable.
- (3) The commission may approve the plan on an interim basis and commence contested case proceedings to determine whether the plan should be approved on a final basis, and, if the utility has objected to minimum annual amount pursuant to (2)(c), above, whether good cause has been shown to adjust that amount.
- (4) Utilities and providers not having a program in place on May 2, 1997, and thereafter, funded to at least .42 percent of annual revenues and from which at least .42 percent of annual revenues was applied to low-income weatherization and bill assistance shall, in the USBP filing and in addition to establishing a USBC to generate, system-wide, an annual amount as established in ARM 38.5.7020, establish USBP accounting reserve computed by applying .42 percent of annual revenues from May 2, 1997, to August 5, 1998. The reserve will be allocated to approved ongoing USBPs, one time USBPs, USBP start-up expenses for new programs, and like expenses, all relating to low-income weatherization and bill assistance. At such time as these are implemented recovery of the reserve will be allowed over a one year period. (History: Secs. 69-3-103, 69-3-1408, MCA; IMP, Sec. 69-3-1408, MCA; NEW, 1998 MAR p. 1506, Eff. 6/12/98.)